

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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CARL CUSH,

Plaintiff,

-against-

**COMPLAINT**

Jury Trial Demanded

Detective ERIC YEUNG, Shield No. 699; and  
JOHN and JANE DOE 1 through 10, individually  
and in their official capacities (the names John and  
Jane Doe being fictitious, as the true names are  
presently unknown),

Defendants.

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**NATURE OF THE ACTION**

1. This is an action to recover money damages arising out of the violation  
of plaintiff's rights under the Constitution.

**JURISDICTION AND VENUE**

2. This action is brought pursuant to 42 U.S.C. §§ 1983 and 1988, and the  
Fourth, Fifth, Sixth and Fourteenth Amendments to the Constitution of the United  
States.

3. The jurisdiction of this Court is predicated upon 28 U.S.C. §§ 1331 and  
1343.

4. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 (b) and (c).

**JURY DEMAND**

5. Plaintiff demands a trial by jury in this action.

**PARTIES**

6. Plaintiff Carl Cush (“plaintiff” or “Mr. Cush”) is a resident of Queens County in the City and State of New York.

7. Defendant Detective Eric Yeung, Shield No. 699 (“Yeung”), at all times relevant herein, was an officer, employee and agent of the NYPD. Defendant Yeung is sued in his individual and official capacities.

8. At all times relevant defendants John and Jane Doe 1 through 10 were police officers, detectives or supervisors employed by the NYPD. Plaintiff does not know the real names and shield numbers of defendants John and Jane Doe 1 through 10.

9. At all times relevant herein, defendants John and Jane Doe 1 through 10 were acting as agents, servants and employees of the City of New York and the NYPD. Defendants John and Jane Doe 1 through 10 are sued in their individual and official capacities.

10. At all times relevant herein, all individual defendants were acting under color of state law.

### **STATEMENT OF FACTS**

11. At approximately 9:00 p.m. on October 23, 2012, Mr. Cush was a lawful passenger in an automobile traveling in the vicinity of Jamaica Avenue and 202<sup>nd</sup> Street in Queens, New York.

12. The defendant officers pulled over the vehicle without probable cause or reasonable suspicion to believe any crime or offense had been committed.

13. Mr. Cush was unlawfully searched and no contraband was recovered from him.

14. Even though the defendant officers knew that Mr. Cush had committed no crime or offense and they lacked probable cause, they handcuffed and falsely arrested him.

15. Mr. Cush was taken to a police precinct.

16. At the precinct the officers falsely informed employees of the Queens County District Attorney's Office that they had observed Mr. Cush in possession of a controlled substance and prepared false paperwork to that effect, including an arrest report.

17. At no point did the officers observe plaintiff possess a controlled substance or commit any crime or offense.

18. Plaintiff was then taken to Queens Central Booking.

19. After spending approximately 21 hours in custody, plaintiff was

arraigned and released on his own recognizance.

20. The criminal charges against plaintiff were subsequently adjourned in contemplation of dismissal.

21. Plaintiff suffered damage as a result of defendants' actions. Plaintiff was deprived of his liberty, suffered emotional distress, mental anguish, fear, pain, anxiety, embarrassment, humiliation, lost wages, loss of employment and damage to his reputation.

**FIRST CLAIM**  
**Unlawful Stop and Search**

22. Plaintiff repeats and realleges each and every allegation as if fully set forth herein.

23. Defendants violated the Fourth and Fourteenth Amendments because they stopped and searched plaintiff without reasonable suspicion.

24. As a direct and proximate result of this unlawful conduct, plaintiff sustained the damages herein before alleged.

**SECOND CLAIM**  
**False Arrest**

25. Plaintiff repeats and realleges each and every allegation as if fully set forth herein.

26. Defendants violated the Fourth and Fourteenth Amendments because they arrested plaintiff without probable cause.

27. As a direct and proximate result of this unlawful conduct, plaintiff sustained the damages hereinbefore alleged.

**THIRD CLAIM**  
**Denial Of Constitutional Right To Fair Trial**

28. Plaintiff repeats and realleges each and every allegation as if fully set forth herein.

29. The individual defendants created false evidence against plaintiff.

30. The individual defendants forwarded false evidence to prosecutors in the Queens County District Attorney's office.

31. In creating false evidence against plaintiff, and in forwarding false information to prosecutors, the individual defendants violated plaintiff's right to a fair trial under the Due Process Clause of the Fifth, Sixth and Fourteenth Amendments of the United States Constitution.

32. As a direct and proximate result of this unlawful conduct, plaintiff sustained the damages hereinbefore alleged.

**FOURTH CLAIM**  
**Failure To Intervene**

33. Plaintiff repeats and realleges each and every allegation as if fully set forth herein.

34. Those defendants that were present but did not actively participate in the aforementioned unlawful conduct observed such conduct, had an opportunity prevent such conduct, had a duty to intervene and prevent such conduct and failed to intervene.

35. Accordingly, the defendants who failed to intervene violated the Fourth, Fifth, Sixth and Fourteenth Amendments.

36. As a direct and proximate result of this unlawful conduct, plaintiff sustained the damages hereinbefore alleged.

**PRAYER FOR RELIEF**

**WHEREFORE**, plaintiff respectfully requests judgment against defendants as follows:

- (a) Compensatory damages against all defendants, jointly and severally;
- (b) Punitive damages against the individual defendants, jointly and severally;
- (c) Reasonable attorneys' fees and costs pursuant to 28 U.S.C. § 1988; and
- (d) Such other and further relief as this Court deems just and proper.

DATED: August 27, 2013  
New York, New York

HARVIS WRIGHT  
SALEEM & FETT LLP

A handwritten signature in black ink, appearing to read 'Gabriel Harvis', is written over a horizontal line.

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